Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Comment to 2012 Amendment

The language of Rule 403 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Civil Cases

403.civ.010 If evidence is relevant and therefore admissible, a trial court may not exclude that evidence unless the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

Shotwell v. Dohahoe, 207 Ariz. 287, 85 P.3d 1045, ¶¶ 4–36 (2004) (court held that admissibility of determination letter issued by EEOC in Title VII employment discrimination lawsuit is controlled by Arizona Rules of Evidence; court stated "contents of Determination is certainly probative of matters at issue in the case," and remanded case to trial court for determination whether probative value was substantially outweighed by dangers of unfair prejudice, confusion of issues, misleading jurors, undue delay, waste of time, or needless presentation of cumulative evidence).

Bogard v. Cannon & Wendt Elec. Co., 221 Ariz. 325, 212 P.3d 17, ¶¶ 32–37 (Ct. App. 2009) (court followed rule that EEOC determination letter is not automatically admissible as evidence in Title VII employment discrimination lawsuit, but instead trial court has discretion to admit such letter under Arizona Rules of Evidence; court held trial court did not abuse discretion in determining EEOC letter was relevant and that its probative value was not substantially outweighed by danger of unfair prejudice).

Ritchie v. Krasner, 221 Ariz. 288, 211 P.3d 1272, ¶¶ 40–44 (Ct App. 2009) (plaintiff injured back at work; defendant opined that plaintiff's condition was stable and that he could go back to work; AHCCCS doctor later diagnosed cervical spinal cord compression and recommended surgery; condition prior to surgery caused part of plaintiff's spinal cord to die, which caused constant pain, so AHCCCS doctor prescribed Oxycontin and Oxycodone; plaintiff subsequently died of accidental overdose, characterized as "synergistic effects of the various medications he was taking for his cervical spinal cord injury"; defendant contended trial court abused discretion in precluding evidence of plaintiff's alcoholism; court held that, because trial court allowed evidence of plaintiff's predisposition to abusing pain drugs, it did not abuse its discretion in precluding evidence of specifics of alcoholism and drug use based on its determination that evidence was "too unclear," "too remote," and "too prejudicial").

Girouard v. Skyline Steel, Inc., 215 Ariz. 126, 158 P.3d 255, ¶¶ 9–23 (Ct. App. 2007) (defendant's employee caused automobile collision that caused decedent's vehicle to burst into flames; decedent died of thermal and inhalation injuries, although there was conflict in evidence showing whether decedent was conscious at time of death; father sought to introduce evidence that fire was so intense that there was nothing of decedent's remains to identify and that

decedent had been burned alive, and this caused father great pains; court noted that evidence of manner of death may have tended to suggest damage award based on emotion, sympathy, or horror, but that possibility did not require exclusion of all evidence of how father was affected by decedent's death).

Harvest v. Craig, 202 Ariz. 529, 48 P.3d 479, ¶¶ 18–22 (Ct. App. 2002) (because evidence showed plaintiff's schizophrenia and bipolar disorder affected her ability to perceive, remember, and relate, plaintiff failed to show any prejudicial effect substantially outweighed probative value, trial court did not abuse discretion in admitting evidence).

Yauch v. Southern Pac. Transp., 198 Ariz. 394, 10 P.3d 1181, ¶¶ 27–28 (Ct. App. 2000) (plaintiff worked as engineer and injured his back while working, and brought Federal Employer's Liability Act claim against defendant railroad; trial court excluded evidence of defendant's Disability Management and Internal Placement Program and plaintiff's failure to take advantage of that program; court held that evidence was relevant to issue of mitigation of damages and thus amount of damages, thus trial court erred in excluding that evidence, and rejected plaintiff's request that it hold that evidence could have been excluded under Rule 403, concluding that evidence was not unfairly prejudicial).

Conant v. Whitney, 190 Ariz. 290, 947 P.2d 864 (Ct. App. 1997) (plaintiffs injured when they ran into bull owned by defendant; evidence that Forest Service land on which defendant had grazing permit did not permit bulls was not unfairly prejudicial).

403.civ.020 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

Higgins v. Assmann Elec. Inc., 217 Ariz. 289, 173 P.3d 453, ¶¶ 35–39 (Ct. App. 2007) (Assmann Electronics was German company; Meyer was Assmann's highest ranking officer in United States and was plaintiff's supervisor; Meyer and plaintiff had consensual sexual relationship that had terminated prior to time of relevant events; over Labor Day, Meyer called plaintiff, and getting no response, went to her apartment, and upon entering, found plaintiff and male companion dressed only in bath towels; Meyer became enraged and attacked plaintiff's companion; Meyer assaulted plaintiff, threw her out front door where her towel came off when she hit wall, punched plaintiff, and then told her she was fired; 3½ weeks later, Assmann's chief financial officer sent letter to plaintiff stating her employment was terminated and her work visa had therefore expired; parties went to trial on assault claim against Meyer and wrongful termination claim against Meyer and Assmann; jurors returned verdict in favor of plaintiff on both counts; Meyer contended trial court erred in admitting evidence of prior altercation he had with co-workers at Z-Tejas restaurant; court noted there was evidence that people at Assmann were aware of Meyer's conduct and took no action; court held this evidence had some probative value in showing Meyer was fully in charge in Arizona and that people at Assmann did not challenge his conduct or decisions; court held that, although evidence did not portray Meyer in favorable light, it did not find that evidence was so prejudicial that it would prejudice jurors; court further noted Meyer did not ask for limiting instruction, which could have reduced prejudicial effect of evidence)

403.civ.030 Because evidence that is relevant will generally be adverse to the opposing party, use of the word "prejudicial" to describe this type of evidence is incorrect and cannot be the basis for excluding evidence under this rule; evidence is "unfairly prejudicial" only if it has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror.

Shotwell v. Dohahoe, 207 Ariz. 287, 85 P.3d 1045, ¶ 34 (2004) (court stated prejudice under Rule 403 is decision based on improper basis, such as emotion, sympathy, or horror).

Hudgins v. Southwest Airlines, Co., 221 Ariz. 472, 212 P.3d 810, ¶¶ 15–18 (Ct. App. 2009) (plaintiffs were bail enforcement agents (bounty hunters); on 9/11/99, they flew from Baltimore to Phoenix; before trip, they called Southwest Airlines (SWA) to obtain instructions on how to transport handguns lawfully on airplane; plaintiffs followed those instructions, but were arrested in Phoenix because they were not law enforcement officers; plaintiffs sued SWA claiming that SWA was negligent in actions that led to plaintiffs' arrest; jurors returned verdicts of $500,000 each in compensatory damages and $4 million each in punitive damages; SWA contended trial court erred in admitting letter from FAA to SWA concerning 1998 incident in which SWA permitted other bounty hunters who had presented false information to board SWA flight; letter stated SWA failed to ask basic questions that would have prevented deception, and further advised SWA that there appeared to be prevalent problem in Arizona where individuals calling themselves bail recovery agents or bounty hunters have been able to present themselves as being authorized to travel armed when they were not so authorized; court held letter was admissible to show SWA had notice of problem of bounty hunters attempting to fly while armed and what steps SWA should take to prevent this from happening; court further held that letter would not have caused jurors to punish SWA for repeated lapses in checking identifications because (1) letter did not say SWA had "prevalent problem" and was instead only warning about single event, (2) trial court gave limiting instruction, and (3) SWA's attorney testified he was unaware of this "prevalent problem," explicitly dispelling any notion that SWA had experienced such problem).

Higgins v. Assmann Elec. Inc., 217 Ariz. 289, 173 P.3d 453, ¶¶ 35–39 (Ct. App. 2007) (Assmann Electronics was German company; Meyer was Assmann's highest ranking officer in United States and was plaintiff's supervisor; Meyer and plaintiff had consensual sexual relationship that had terminated prior to time of relevant events; over Labor Day, Meyer called plaintiff, and getting no response, went to her apartment, and upon entering, found plaintiff and male companion dressed only in bath towels; Meyer became enraged and attacked plaintiff's companion; Meyer assaulted plaintiff, threw her out front door where her towel came off when she hit wall, punched plaintiff, and then told her she was fired; 3½ weeks later, Assmann's chief financial officer sent letter to plaintiff stating her employment was terminated and her work visa had therefore expired; parties went to trial on assault claim against Meyer and wrongful termination claim against Meyer and Assmann; jurors returned verdict in favor of plaintiff on both counts; Meyer contended trial court erred in admitting evidence of prior altercation he had with co-workers at Z-Tejas restaurant; court noted there was evidence that people at Assmann were aware of Meyer's conduct and took no action; court held this evidence had some probative value in showing Meyer was fully in charge in Arizona and that people at Assmann did not challenge his conduct or decisions; court held that, although evidence did not portray Meyer in favorable light, it did not find that evidence was so prejudicial that it would prejudice jurors; court further noted Meyer did not ask for limiting instruction, which could have reduced prejudicial effect of evidence).

Girouard v. Skyline Steel, Inc., 215 Ariz. 126, 158 P.3d 255, ¶¶ 9–23 (Ct. App. 2007) (defendant's employee caused automobile collision that caused decedent's vehicle to burst into flames; decedent died of thermal and inhalation injuries, although there was conflict in evidence showing whether decedent was conscious at time of death; father sought to introduce evidence that fire was so intense that there was nothing of decedent's remains to identify and that decedent had been burned alive, and this caused father great pains; court noted that evidence of manner of death may have tended to suggest damage award based on emotion, sympathy, or horror, but that possibility did not require exclusion of all evidence of how father was affected by decedent's death).

Henry v. Healthpartners of Southern Arizona, 203 Ariz. 393, 55 P.3d 87, ¶¶ 15, 18 (Ct. App. 2002) (medical malpractice action resulting from patient's death from cancer was filed against decedent's doctor, radiologist employed by medical center, and medical center (TMC/HSA); plaintiff settled with doctors and went to trial against TMC/HSA; TMC/HSA named doctors as non-parties at fault; because plaintiff's trial strategy was to minimize radiologist's fault in order to place more of blame on TMC/HSA, plaintiff's factual allegations contained in complaint delineating radiologist's negligence were relevant; court noted plaintiff was undoubtedly prejudiced by admission of factual allegations, but because they would not cause jurors to decide case based on emotion, sympathy, or horror, they were not subject to exclusion under Rule 403).

403.civ.040 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of confusing the issues or misleading the jurors, and establishes that this danger of confusing the issues substantially outweighs the probative value.

Brethauer v. General Motors Corp., 221 Ariz. 192, 211 P.3d 1176, ¶¶ 15–17 (Ct. App. 2009) (plaintiff's 1998 pick-up truck went off road and bounced through ditch; side and rear windows shattered and plaintiff was ejected out rear window; plaintiff asserted he was wearing seat belt; plaintiff contended seat belt buckle was defective and unlatched improperly; trial court precluded evidence that GM recalled certain 1994–95 pick-up trucks because seat belt buckle could become improperly unlatched in frontal collision; trial court precluded this evidence because, although plaintiff's truck had same buckle, plaintiff's truck did not have same fabric belt system as in 1994–95 trucks, plaintiff was not involved in frontal collision, and no evidence showed that, absent defective fabric belts in 1994–95 trucks, buckles could have unlatched prior to collision; court held that, even if this evidence were considered relevant, trial court did not abuse discretion in precluding it because it could have misled jurors because of differences in design of two systems and type of accident).

Brethauer v. General Motors Corp., 221 Ariz. 192, 211 P.3d 1176, ¶¶ 18–20 (Ct. App. 2009) (plaintiff contended trial court erred by precluding 3-minute videotaped collage of 10 GM-conducted tests on seat belt systems containing same buckle as involved in subject litigation; because seven tests were of seat belt systems containing different fabric belts than one involved in subject litigation, one involved torn belt webbing at latch plate of buckle prototype due to sewing problem, one involved buckle that unlatched when test dummy struck release button after impact, and one involved buckle release that occurred on rebound of dummy after crash, trial court precluded videotape because it could have confused jurors, wasted time, and caused unfair prejudice to GM; court held that trial court did not abuse discretion in precluding videotape).

Elia v. Pifer, 194 Ariz. 74, 977 P.2d 796, ¶¶ 41–42 (Ct. App. 1998) (defendant was plaintiff's former attorney in dissolution action; plaintiff sued defendant for legal malpractice, claiming defendant did not have authority to agree to terms of proposed settlement agreement, and also included a claim for emotional distress from being jailed for failing to pay child support and spousal maintenance required by the decree; plaintiff wanted to present hearsay testimony from wife that plaintiff called her from jail and told her that another inmate had tried to kill him because he thought plaintiff was child molester; court held that trial court properly excluded this evidence because it was cumulative and could cause jurors to be confused on how to use that evidence).

403.civ.050 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of undue delay or waste of time, and establishes that this danger of undue delay or waste of time substantially outweighs the probative value.

Yauch v. Southern Pac. Transp., 198 Ariz. 394, 10 P.3d 1181, ¶¶27–28 (Ct. App. 2000) (plaintiff injured his back while working, and brought Federal Employer's Liability Act claim against defendant railroad; trial court excluded evidence of defendant's Disability Management and Internal Placement Program and plaintiff's failure to take advantage of that program; court held evidence was relevant to issue of mitigation of damages and thus amount of damages, thus trial court erred in excluding that evidence, and rejected plaintiff's request that it hold that evidence could have been excluded under Rule 403, concluding that amount of time needed to present evidence would not substantially outweigh probative value).

403.civ.080 The trial court may exclude evidence of absence of prior accidents if its probative value is substantially outweighed by the danger of unfair prejudice, if it would confuse the issues or mislead the jurors, if it would cause undue delay or waste of time, or if it would be cumulative.

Isbell v. State, 198 Ariz. 291, 9 P.3d 322, ¶ 9 (2000) (because defendant failed to make required foundational showing, including how many near accidents and how many fortuitous escapes from injury may have occurred, trial court did not abuse discretion in precluding evidence of absence of prior accidents at railroad crossing in question).

Hernandez v. State, 201 Ariz. 336, 35 P.3d 97, ¶¶ 19–22 (Ct. App. 2001) (plaintiff fell off wall at Patagonia Lake Park; because park manager had served there for 8 years and lived there year-round, and because any fall off that wall would have resulted in serious injuries, park manager was permitted to testify that he knew of no other accidents at that wall), *vacated,* 203 Ariz. 196, 52 P.3d 765 (2002).

403.civ.125 If a party makes a motion for an evidentiary ruling based in part on Rule 403 and the trial court does not cite Rule 403 in its ruling, the appellate court will presume that the trial court also relied on Rule 403 in its ruling.

Salt River Project v. Miller Park LLC, 218 Ariz. 246, 183 P.3d 497, ¶¶ 23–25 (2008) (in condemnation action, defendant sought to preclude statements in defendant's previous tax protest that full cash value of property was certain figure, which was less than amount defendant requested in condemnation action; defendant moved to preclude evidence under both Rule 402 and 403; trial court did not specify whether its ruling was based on Rule 402, Rule 403, or both; on appeal, plaintiff in effect asked court to presume trial court relied only on Rule 402; court held it would instead presume that trial court relied on both rules in making its ruling).

In re Jaramillo, 217 Ariz. 460, 176 P.3d 28, ¶ 18 (Ct. App. 2008) (in sexually violent persons case, Jaramillo asked trial court to exclude evidence of three prior sexual acts, and cited Rule 403 in his motion; on appeal, Jaramillo claimed trial court failed to conduct Rule 403 analysis; court stated that, although trial court made no express finding under Rule 403, record sufficiently demonstrated that trial court considered and balanced necessary factors in its ruling).

403.civ.140 When evidence has both probative value and prejudicial effect, the trial court need not require wholesale proscription; it should determine (1) whether probative value of the evidence is sufficient that it should be admitted in some form, (2) what restrictions should be placed by jury instructions on the use of the evidence, and (3) whether the evidence can be narrowed or limited to reduce its potential for unfair prejudice while preserving probative value.

Girouard v. Skyline Steel, Inc., 215 Ariz. 126, 158 P.3d 255, ¶¶ 22–23 (Ct. App. 2007) (defendant's employee caused automobile collision that caused decedent's vehicle to burst into flames; decedent died of thermal and inhalation injuries, although there was conflict in evidence showing whether decedent was conscious at time of death; father sought to introduce evidence that fire was so intense that there was nothing of decedent's remains to identify and that decedent had been burned alive, and this caused father great pain; court noted that evidence of manner of death may have tended to suggest damage award based on emotion, sympathy, or horror, but that possibility did not require exclusion of all evidence of how father was affected by decedent's death; court left it to trial court on remand to determine what evidence to admit and what to exclude).

403.civ.180 Because the determination under this rule involves a weighing and balancing of competing evidentiary factors, it is a determination the trial court is in the best position to make, thus an appellate court should leave this determination to discretion of the trial court and not substitute its determination of how it would have ruled if it had been sitting as the trial court.

Crackel v. Allstate Ins. Co., 208 Ariz. 252, 92 P.3d 882, ¶¶ 46–53 (Ct. App. 2004) (plaintiffs sued Allstate for abuse of process based on how Allstate handled their minor impact soft tissue (MIST) claims, and sought to introduce evidence of how Allstate handled other MIST claims; trial court precluded evidence under Rule 403; court agreed with plaintiffs that other act evidence was both relevant and probative of issues in the case, and although it stated that reasonable minds might disagree with trial court's assessment that probative value of other act evidence was limited, it stated it could not conclude that trial court abused its discretion in light of argument given on both sides of question).

Crackel v. Allstate Ins. Co., 208 Ariz. 252, 92 P.3d 882, ¶¶ 65–67 (Ct. App. 2004) (trial court ordered parties to participate in settlement conference before Judge O'Neil; based on their conduct, Judge O'Neil found Allstate's employees had not participated in settlement conference in good faith, and ordered case to be tried on issue of damages only, at which point Allstate settled plaintiffs' claims; plaintiffs then sued Allstate for abuse of process, and sought to introduce Judge O'Neil's order sanctioning Allstate; court held sanction order was not hearsay because it was not offered to prove truth of matters asserted, but was instead offered to show effect it had on Allstate and its employees in settling plaintiffs' claims, and that evidence was relevant on issue of punitive damages; although court concluded sanction order was relevant and admissible, it stated it could not conclude trial court abused discretion in precluding sanction order in light of argument given on both sides of question).

Harvest v. Craig, 202 Ariz. 529, 48 P.3d 479, ¶¶ 19 (Ct. App. 2002) (court stated only "manifest abuse of discretion justifies reversal of the trial court's weighing of probative value and prejudicial effect under Rule 403").

Yauch v. Southern Pac. Transp., 198 Ariz. 394, 10 P.3d 1181, ¶¶ 25–26 (Ct. App. 2000) (plaintiff worked as engineer and injured his back while working, and brought Federal Employer's Liability Act claim against defendant railroad; trial court excluded evidence of defendant's Disability Management and Internal Placement Program and plaintiff's failure to take advantage of that program; court held evidence was relevant to issue of mitigation of damages (amount of damages), thus trial court erred in excluding that evidence, and rejected plaintiff's request that it hold that evidence could have been excluded under Rule 403, noting that balancing under Rule 403 is peculiarly a trial court function).

Criminal Cases

403.cr.005 In order to raise on appeal a claim that the evidence should have been excluded under Rule 403, the party must make a specific objection stating Rule 403 as the grounds for the objection.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 55–58 (2003) (defendant contended on appeal that trial court abused discretion under Rule 403 in admitting photographs; state noted defendant only objected generally to admission of photographs; court held that, "Because the appellant's trial counsel did not object on 403 grounds, the argument has been waived.").

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 59–63 (2003) (defendant objected to testimony about meaning of his EME tattoo on basis of relevance and foundation; on appeal, defendant contended admission of this evidence violated Rule 403; court held defendant waived any Rule 403 objection).

State v. Miller, 215 Ariz. 40, 156 P.3d 1145, ¶ 9 (Ct. App. 2007) (defendant was charged with robbery at store; after reviewing suspect descriptions and *modus operandi* of two other robberies at stores, detective concluded same person had committed those robberies; trial court permitted detective to testify that, after date that defendant was arrested, there had been no other similar robberies in the area; court held this evidence was relevant; court stated evidence may have been subject to exclusion under Rule 403, but would not address that issue because defendant did not make Rule 403 objection).

403.cr.010 If evidence is relevant and therefore admissible, a trial court may not exclude that evidence unless the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

State v. Machado, 226 Ariz. 281, 246 P.3d 632, ¶ 25 (2011) (only issue in case was whether defendant or someone else committed murder; evidence of telephone call wherein caller admitted committing crime was relevant, and because it did not have potential of distracting jurors from central issue of case, probative value was not outweighed by prejudicial effect).

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶ 20 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting following evidence: (1) 3 months prior, he had violently shaken victim; (2) 2 months prior, he had bruised victim's face and buttocks; (3) 1 month prior, he had bruised victim's face; (4) weeks prior, he had bruised victim's arms; court held evidence

was relevant to rebut defendant's claim that he did not intend to hurt victim and hit her as "reflex" as well as his contention that girlfriend could have caused injuries, and held that, in light of defendant's defenses, probative value was not substantially outweighed by prejudicial effect because these other acts occurred shortly before fatal attack, and trial court gave appropriate limiting instruction).

State v. Roque, 213 Ariz. 193, 141 P.3d 368, ¶¶ 53–59 (2006) (after 9/11/01, defendant said he wanted to shoot some "rag heads," referring to people defendant perceived to be of Arab descent; after drinking 75 ounces of beer, defendant shot and killed Sikh of Indian descent who wore turban, and shot at several other people at other locations; state's theory of case was that shootings were intentional acts of racism while intoxicated; defendant pursued insanity defense; in assessing defendant's mental health, state's expert testified that he considered defendant's 1983 conviction for attempted robbery; court noted that evidence of prior conviction is generally admissible when insanity is issue, but this evidence had only minimal probative value because there was no showing that robbery was alcohol induced or product of racism; however, although probative value was minimal, so was any prejudicial effect because (1) jurors heard about prior conviction from two other experts who testified that, because of age of conviction and lack of violence, it did not affect their assessment of defendant's mental health, (2) defendant admitted doing acts that were basis of current charges, so jurors did not rely on fact of prior conviction to prove defendant committed current acts, and (3) trial court offered to give limiting instruction, but defendant declined offer; thus defendant failed to prove probative value was substantially outweighed by danger of unfair prejudice).

State v. Johnson, 212 Ariz. 425, 133 P.3d 735, ¶ 28 (2006) (although evidence that defendant was member of gang could have highly inflammatory impact, because evidence of defendant's gang-related activities was relevant to show motive for killing, which was to eliminate witness, trial court did not abuse discretion in admitting this evidence).

State v. Johnson, 212 Ariz. 425, 133 P.3d 735, ¶¶ 36–40 (2006) (although parts of videotape of defendant's statement did not reflect well on defendant because of his use of profanity and references to unrelated criminal conduct, it was relevant because state's expert based opinion of personality disorder in part on videotape, and was helpful to jurors because it showed defendant's histrionic traits, thus trial court did not abuse discretion in admitting this evidence).

State v. Cañez, 202 Ariz. 133, 42 P.3d 564, ¶¶ 50–51 (2002) (because hearing defendant's actual words and his demeanor would assist jurors in determining defendant's credibility, audiotape had probative value; court held it would be rare case when defendant's own statement would be considered prejudicial to extent it should be excluded under Rule 403).

State v. Nordstrom, 200 Ariz. 229, 25 P.3d 717, ¶ 50 (2001) (because letter from defendant to third person had significant probative value, and because prejudicial effect of defendant's anger at third person for "not taking care of things the way we talked about" was minimal, trial court did not abuse discretion in admitting letter).

State v. Martinez, 196 Ariz. 451, 999 P.2d 795, ¶¶ 29–33 (2000) (ballistic evidence showed shell casing found at subsequent robbery was consistent with ammunition used in officer's gun; evidence that defendant committed subsequent robbery was relevant to determination of defendant's identity as person who killed officer; defendant failed to establish evidence was unfairly prejudicial, or that danger of unfair prejudice substantially outweighed probative value).

State v. Fulminante, 193 Ariz. 485, 975 P.2d 75, ¶¶ 56–57 (1999) (evidence comparing lead fragments from victim's head to lead ammunition from defendant's home was relevant because it showed defendant possessed ammunition consistent with that used to kill victim; defendant failed to show this evidence was unfairly prejudicial).

State v. Fulminante, 193 Ariz. 485, 975 P.2d 75, ¶ 60 (1999) (evidence that defendant spanked victim and later said, "I'll kill your fucking ass," was relevant to show defendant's motive; defendant failed to show this evidence was unfairly prejudicial).

State v. Sharp, 193 Ariz. 414, 973 P.2d 1171, ¶¶ 22–23 (1999) (in trial for kidnapping, sexual assault, and murder, pornographic magazine was relevant to show premeditation because it tended to show defendant's motive in calling victim to room was sexual; danger of unfair prejudice was limited because magazine was cumulative to other evidence of sexual motive and premeditation, and because prosecutor did not emphasize evidence at trial).

State v. Rienhardt, 190 Ariz. 579, 951 P.2d 454 (1997) (on cross-examination, defendant elicited inconsistent statement from state's key witness; trial court allowed state to introduce prior consistent statements on re-direct; defendant claimed this put defense counsel in unfair light; court held that any unfair prejudice did not substantially outweigh probative value).

State v. Lee(I), 189 Ariz. 590, 944 P.2d 1204 (1997) (although evidence of other murders was harmful to defense, not all harmful evidence is unfairly prejudicial; no showing that jurors were improperly influenced by emotion or horror).

State v. Ramsey, 211 Ariz. 529, 124 P.3d 756, ¶ 37 (Ct. App. 2005) (defendant charged with continuous sexual abuse of child, which requires proof of three or more acts of sexual conduct with a minor, sexual assault, or molestation of a child under 14 years of age over a period of 3 months or more; evidence showed defendant touched 12-year-old daughter's breasts, vagina, and buttocks numerous times over 22-month period; court held evidence of incestuous pornographic material and evidence that defendant took daughter to adult store and bought vibrator and bottle of lubricant for her was relevant, and that trial court did not abuse discretion in overruling defendant's Rule 403 objection).

State v. Mills, 196 Ariz. 269, 995 P.2d 705, ¶ 28 (Ct. App. 1999) (defendant had been involved in dissolution action with wife, and was charged with killing his wife by paying someone to shoot her; trial court properly admitted evidence that, 2 months prior to shooting, defendant had cut brake lines on wife's truck; although this evidence was prejudicial, defendant failed to show it was *unduly* prejudicial).

State v. Klausner (Alger), 194 Ariz. 169, 978 P.2d 654, ¶¶ 19–20 (Ct. App. 1998) (trial court erred in finding that presumptions provided in A.R.S. § 28–692(E) [§ 28–1381(G)] were unfairly prejudicial and in refusing to present them to jurors).

State v. Uriarte, 194 Ariz. 275, 981 P.2d 575, ¶¶ 20, 23 (Ct. App. 1998) (defendant was charged with child molestation, sexual conduct with minor, and public sexual indecency involving his 12-year-old sister-in-law; defendant's wife testified; evidence showed defendant's wife threatened victim and victim's mother with death if defendant was convicted; trial court did not abuse discretion in determining that this evidence had probative value, and that probative value was not substantially outweighed by danger of unfair prejudice).

State v. Baldenegro, 188 Ariz. 10, 932 P.2d 275 (Ct. App. 1996) (in charge of assisting and participating in criminal syndicate for benefit of street gang, state had to prove "Carson 13" was a criminal street gang, thus evidence of criminal activity by members of "Carson 13" was relevant and had substantial probative value; trial court limited prejudicial effect by excluding specific names and instances of criminal conduct by "Carson 13" members; trial court therefore did not abuse discretion by admitting this evidence).

403.cr.020 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of *unfair* prejudice, and establishes that the *unfair* prejudice *substantially* outweighs the probative value.

State v. Hughes, 189 Ariz. 62, 938 P.2d 457 (1997) (in a jailhouse statement, defendant said he gave juveniles cocaine as payment for committing murder, and evidence that certain juvenile had committed fire bombings would show defendant's control over that juvenile, but because most of witnesses discussed arson in context of defendant's retaliatory character, there was substantial risk jurors considered this evidence for improper purpose).

State v. Coghill, 216 Ariz. 578, 169 P.3d 942, ¶¶ 12–22 (Ct. App. 2007) (defendant was charged with sexual exploitation of minor based on having child pornography on his computer; defendant contended trial court abused discretion in admitting evidence that he had downloaded adult pornography on his computer; court held that evidence showing defendant's ability, willingness, and superior opportunity to download and copy other material from Internet was both relevant and admissible, but nature and content of other downloaded material was either not relevant, or else its probative value was substantially outweighed by danger of unfair prejudice).

State v. Vigil, 195 Ariz. 189, 986 P.2d 222, ¶¶ 26–27 (Ct. App. 1999) (court held trial court erred in not conducting any Rule 403 inquiry).

401.cr.022 A defendant's Sixth Amendment right to present evidence is limited to the presentation of matters admissible under ordinary evidentiary rules, thus exclusion of evidence because probative value is substantially outweighed by factors listed in Rule 403 does not violate defendant's constitutional right to present evidence.

* *State v. Hardy,* 230 Ariz. 281, 283 P.3d 12, ¶¶ 46–51 (2012) (court held trial court did not abuse discretion in excluding defendant's personal history evidence during guilt phase).

403.cr.025 If the trial court determines that evidence that another person may have committed the crime is relevant in that it tends to create a reasonable doubt about the defendant's guilt, the trial court may exclude that evidence if it determines that the evidence poses the danger of unfair prejudice, and that the unfair prejudice substantially outweighs the probative value.

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 30–36 (2003) (defendant sought to introduce evidence that, because victim took and sold drugs, some person involved in notoriously violent drug scene might have killed victim; trial court stated any connection between drug trade and murders was a "reach"; court stated its review would have been easier if trial court had stated its conclusion in terms of applicable legal standard, but because trial court discussion showed it understood need to determine relevance of evidence and thus was guided by applicable legal standard, court held that, whether trial court concluded evidence was not relevant under Rule 401 or tenuous and speculative nature of evidence caused it to fail Rule 403 test, trial court did not abuse discretion in precluding this evidence).

State v. Gibson, 202 Ariz. 321, 44 P.3d 1001, ¶¶ 17–18 (2002) (evidence showed defendant, victim, and two other individuals were from same small Arizona town; these two individuals had been with victim shortly before murder, both gave alibis that could not be corroborated, both knew substantial information about crime that had not been made known to public; one of them had mental problems, and there was alleged sexual relationship between his wife and victim; trial court used "inherent tendency" test and excluded this evidence; court rejected "inherent tendency" test, held this type of evidence should be analyzed under Rules 401, 402, and 403, and reversed conviction).

403.cr.030 Because evidence that is relevant will generally be adverse to the opposing party, use of the word "prejudicial" to describe this type of evidence is incorrect and cannot be the basis for excluding evidence under this rule; evidence is "*unfairly* prejudicial" only if it has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror.

* *State v. Hardy,* 230 Ariz. 281, 283 P.3d 12, ¶ 40 (2012) (trial court could reasonably find evidence of defendant's slapping victim was more probative than prejudicial because defendant's motive and intent were significant issues at trial; further, trial court properly instructed jurors on limited use of this evidence).

State v. Boggs, 218 Ariz. 325, 185 P.3d 111, ¶¶ 67 (2008) (in mitigation, defendant claimed he suffered from mental health issues, including bipolar disorder, which caused him to have delusional involvement in a militia; defendant's letters threatening harm to those who mistreated leader of militia were relevant because they rebutted suggestion that defendant's involvement in militia was benign; because letters were not offered to show defendant's bad character, trial court did not abuse discretion in admitting them).

State v. Lee(I), 189 Ariz. 590, 599–600, 944 P.2d 1204, 1213–14 (1997) (although evidence of other murders was harmful to defense, not all harmful evidence is unfairly prejudicial; no showing that jurors were improperly influenced by emotion or horror).

State v. Dickens, 187 Ariz. 1, 926 P.2d 468 (1996) (once state had rested, one of its witnesses who previously refused to testify now agreed to testify; trial court did not abuse discretion in allowing state to reopen when testimony did not come as surprise to defendant; court noted that testimony certainly hurt defendant's case, but that did not equate to bad faith).

* *State v. Butler,* 230 Ariz. 465, 286 P.3d 1074, ¶¶ 26–35 (Ct. App. 2012) (defendant was charged with conspiracy to possess or transport marijuana for sale; defendant objected to admission of property receipt from Georgia sheriff's department for "Nike shoe box containing a large amount of U.S. currency"; because receipt was dated less than 1 week before Arizona authorities found drugs and weapons, and cash in box in house where defendant was visiting, trial court reasonably concluded receipt directly proved alleged conspiracy or that transporting large amounts of cash was done contemporaneously with and directly facilitated charged conspiracy; additionally, receipt showed defendant had Florida address, and evidence for current chargers showed large amounts of marijuana were shipped to Florida; evidence was thus intrinsic; trial court did not abuse discretion in finding probative value was not substantially outweighed by danger of unfair prejudice).

State v. Damper, 223 Ariz. 572, 225 P.3d 1148, ¶¶ 20–22 (Ct. App. 2010) (defendant was charged with killing girlfriend (C.); defendant claimed shooting was accidental; shortly before shooting, C's friend B. received text message from C's cell phone that said, "Can you come over; me and Marcus [defendant] are fighting and I have no gas"; defendant contended prejudicial effect outweighed probative value; court held no show message would have caused jurors to decide

case based on emotion, sympathy, or horror, and that message had significant probative value, thus trial court properly admitted text message).

State v. Connor, 215 Ariz. 553, 161 P.3d 596, ¶¶ 37–39 (Ct. App. 2007) (defendant was charged with first-degree murder; evidence was presented that victim had been victim of check-cashing scheme and that victim's mother told him to stay away from anyone asking him to cash checks for them; evidence that defendant had asked victim to cash checks admissible to rebut defendant's testimony that he was friends with victim and was welcome in his apartment; court noted that evidence is "unfairly prejudicial" only if it has an undue tendency to suggest a decision on an improper basis, such as emotion, sympathy, or horror, and stated trial court was in best position to make this determination, and that trial court had given limiting instruction, which would mitigate any potential for unfair prejudice).

State v. Mills, 196 Ariz. 269, 995 P.2d 705, ¶ 28 (Ct. App. 1999) (defendant had been involved in dissolution action with wife, and was charged with killing his wife by paying someone to shoot her; trial court properly admitted evidence that, 2 months prior to shooting, defendant had cut brake lines on wife's truck; although this evidence was prejudicial, defendant failed to show it was *unduly* prejudicial).

State v. Fillmore, 187 Ariz. 174, 927 P.2d 1303 (Ct. App. 1996) (noted that any evidence that is probative of defendant's guilt is prejudicial, but "unfair prejudice" is something different; because defendant argued to trial court only that his statements were highly prejudicial and of questionable relevance and did not argue they were unfairly prejudicial and made no effort on appeal to show how they would have been unfairly prejudicial, court concluded that trial court properly admitted them).

403.cr.040 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of confusing the issues or misleading the jurors, and establishes that this danger of confusing the issues substantially outweighs the probative value.

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 37–39 (2003) (defendant sought to introduce evidence of drugs in victims' systems in order to discredit medical examiner's testimony about how quickly victims died; because medical examiner testified that drugs in system probably did not make substantial difference in time it took victims to die, this evidence may well have confused issues at trial, thus trial court did not abuse discretion in excluding this evidence).

403.cr.045 If the trial court determines that evidence that another person may have committed the crime is relevant in that it tends to create a reasonable doubt about the defendant's guilt, the trial court may exclude that evidence if it determines that the evidence poses the danger of confusing the issues or misleading the jurors, and establishes that this danger of confusing the issues substantially outweighs the probative value.

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 30–36 (2003) (defendant sought to introduce evidence that, because victim took and sold drugs, some person involved in notoriously violent drug scene might have killed victim; trial court stated any connection between drug trade and murders was a "reach"; court stated its review would have been easier if trial court had stated its conclusion in terms of applicable legal standard, but because trial court discussion showed it understood need to determine relevance of evidence and thus was guided by applicable legal standard, court held that, whether trial court concluded evidence was not relevant under Rule 401 or tenuous and speculative nature of evidence caused it to fail Rule 403 test, trial court did not abuse discretion in precluding this evidence).

State v. Gibson, 202 Ariz. 321, 44 P.3d 1001, ¶¶ 17–18 (2002) (evidence showed defendant, victim, and two other individuals were from same small Arizona town; these two individuals had been with victim shortly before murder, both gave alibis that could not be corroborated, both knew substantial information about crime that had not been made known to public; one of them had mental problems, and there was alleged sexual relationship between his wife and victim; trial court used "inherent tendency" test and excluded this evidence; court rejected "inherent tendency" test, held this type of evidence should be analyzed under Rules 401, 402, and 403, and reversed conviction).

403.cr.050 If evidence is relevant and therefore admissible, a trial court may exclude that evidence if the opposing party establishes that the evidence poses the danger of undue delay or waste of time, and establishes that this danger of undue delay or waste of time substantially outweighs the probative value.

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 37–39 (2003) (defendant sought to introduce evidence of drugs in victims' systems in order to discredit medical examiner's testimony about how quickly victims died; because medical examiner testified that drugs in system probably did not make substantial difference in time it took victims to die, this evidence may well have wasted time at trial, thus trial court did not abuse discretion in excluding this evidence).

State v. Nordstrom, 200 Ariz. 229, 25 P.3d 717, ¶ 39 (2001) (because trial court admitted evidence of defendant's brother's conduct during his recent period of probation, trial court did not abuse discretion in precluding evidence of defendant's brother's conduct during 1992–93 period of probation).

State v. Abdi, 226 Ariz. 361, 248 P.3d 209, ¶¶ 28–30 (Ct. App. 2011) (defendant testified he had been in refugee camp in Kenya at age 13 and that police in refugee camp had been corrupt and had beaten him; because that evidence would have supported defendant's explanation of why he ran from scene of stabbing and why he initially denied involvement when questioned by police, trial court did not abuse discretion in precluding as being cumulative defendant's testimony about being tortured as child in Somalia).

403.cr.055 If the trial court determines evidence that another person may have committed the crime is relevant in that it tends to create a reasonable doubt about defendant's guilt, the trial court may exclude that evidence if it determines the evidence poses the danger of undue delay or waste of time, and establishes that this danger of undue delay or waste of time substantially outweighs the probative value.

State v. Dann, 205 Ariz. 557, 74 P.3d 231, ¶¶ 30–36 (2003) (defendant sought to introduce evidence that, because victim took and sold drugs, some person involved in notoriously violent drug scene might have killed victim; trial court stated any connection between drug trade and murders was a "reach"; court stated its review would have been easier if trial court had stated its conclusion in terms of applicable legal standard, but because trial court discussion showed it understood need to determine relevance of evidence and thus was guided by applicable legal standard, court held that, whether trial court concluded evidence was not relevant under Rule 401 or tenuous and speculative nature of evidence caused it to fail Rule 403 test, trial court did not abuse discretion in precluding this evidence).

State v. Gibson, 202 Ariz. 321, 44 P.3d 1001, ¶¶ 17–18 (2002) (evidence showed defendant, victim, and two other individuals were from same small Arizona town; these two individuals had been with victim shortly before murder, both gave alibis that could not be corroborated, both knew substantial information about crime that had not been made known to public; one of them had mental problems, and there was alleged sexual relationship between his wife and victim; trial court used "inherent tendency" test and excluded this evidence; court rejected "inherent tendency" test, held this type of evidence should be analyzed under Rules 401, 402, and 403, and reversed conviction).

403.cr.080 If the crime, wrong, or act is an element of the charged crime, the trial court may not exclude that evidence or require its presentation in a bifurcated proceeding, even when the trial court concludes that the evidence is unfairly prejudicial.

State v. Geschwind, 136 Ariz. 360, 363, 666 P.2d 460, 463 (1983) (because prior DUI offense was element of offense, defendant was not entitled to bifurcated trials on issues whether he drove while intoxicated without license and whether this was second time he did so).

State v. Talamante (Murray), 214 Ariz. 106, 149 P.3d 484, ¶¶ 6–12 (Ct. App. 2006) (grand jury indicted defendant for violent sexual assault; state alleged defendant had prior conviction for sexual assault; court held that fact of prior conviction was element of offense and rejected defendant's contention that fact of prior conviction was sentencing enhancement factor, and thus concluded trial court erred in ruling that state could not introduce evidence of prior conviction in its case-in-chief).

403.cr.100 Once the trial court determines that a photograph has probative value, the trial court, if requested, must determine whether the photograph has any danger of unfair prejudice, and if so, whether the danger of unfair prejudice substantially outweighs the probative value.

State v. Snelling, 225 Ariz. 182, 236 P.3d 409, ¶¶ 15–17 (2010) (trial court admitted autopsy photographs of victim who had been dead for 4 days; although photographs showed skin slippage and discoloration, each photograph conveyed highly relevant evidence about crime: cause and manner of victim's death and her body's state of decomposition, and medical examiner used them to explain injuries and assist jurors in understanding his testimony; court held trial court did not abuse discretion in admitting photographs after expressly finding their probative value was not substantially outweighed by any prejudicial effect).

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶ 23 (2010) (defendant was charged with first-degree murder and child abuse as result of death of his girlfriend's daughter; defendant contended trial court erred in admitting autopsy photographs showing various internal injuries; court held photographs were relevant to prove cause of death and extent of abuse and to rebut defendant's argument that victim seemed fine after he beat her and his suggestion she died because of lack of prompt medical care; court noted photographs showed only internal injuries and were unlikely to cause undue prejudice when charges involved beating death of young child, and further stated, "There is nothing sanitary about murder, and there is nothing in Rule 403 that requires a trial judge to make it so").

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 29–31 (2010) (photographs depicted blood spatter and blood pools in relation to victim's body, and thus corroborated opinion of state's expert that person who slit victim's throat stood behind him; court stated that, although photographs were disturbing, none was overly gruesome, and further noted, "There is nothing sanitary about murder" and nothing "requires a trial judge to make it so").

State v. Lynch, 225 Ariz. 27, 234 P.3d 595, ¶¶ 51–53 (2010) (during aggravation phase, trial court admitted three autopsy photographs depicting close-ups of victim's neck wounds (cut jugular vein; completely severed carotid artery; victim's torso covered in dried blood and head tilted back exposing severed larynx); court held these were properly admitted to illustrate testimony of medical examiner; court noted that, before jurors saw these photographs, they heard expert testimony about neck injuries without objection).

State v. Kiles, 222 Ariz. 25, 213 P.3d 174, ¶ 37 (2009) (because photograph of adult victim showed her broken arm, which medical testimony explained was defensive wound, court held photograph was relevant to issue of whether defendant committed first-degree murder; court noted defendant identified nothing about photograph that was particularly inflammatory, especially given that "[t]here is nothing sanitary about murder").

State v. Dann, 220 Ariz. 351, 207 P.3d 604, ¶¶ 44–47 (2009) (defendant contended trial court denied him his right to fair trial when it admitted autopsy photographs, which he contended were gruesome; court held photographs were relevant because they gave jurors clear picture of temporal, spatial, and motivational relationship of three killings; court stated "there is nothing sanitary about murder" and that "nothing requires a trial judge to make it so"; court noted trial court carefully examined all crime scene and autopsy photographs and excluded most gruesome ones, thus trial court did not abuse discretion in admitting photographs).

State v. Cruz, 218 Ariz. 149, 181 P.3d 196, ¶¶ 123–127 (2008) (defendant challenged admission of autopsy photograph; court held photograph was relevant to assist jurors because fact and cause of death are always relevant in murder prosecution; court noted photograph was not particularly inflammatory, and that there is nothing sanitary about murder, and there is nothing in Rule 403 that requires trial court to make it so).

State v. Pandeli, 215 Ariz. 514, 161 P.3d 557, ¶ 26 (2007) (court concluded only one photograph was gruesome, but noted trial court did not admit other photographs that were more gruesome; court held trial court did not abuse discretion in concluding probative value was not substantially outweighed by danger of unfair prejudice).

State v. Pandeli, 215 Ariz. 514, 161 P.3d 557, ¶¶ 27–29 (2007) (photograph of Confederate flag used as window covering on van was relevant because victim's blood was on flag; photograph of van showing Confederate flag was relevant because killing took place in van; photograph of defendant, in which he was shirtless and showed tattoos, was relevant because it showed defendant's physical condition at time of murder and showed no visible injuries or defensive wounds; court noted probative value was minimal because defendant stipulated to existence of blood on flag, that murder took place in van, and that defendant had no injuries; court also noted prejudicial effect was minimal because defendant stipulated to blood on "Confederate flag taken from the rear side window" of defendant's van, and that it was not possible to read what tattoos said).

State v. Morris, 215 Ariz. 324, 160 P.3d 203, ¶¶ 68–71 (2007) (court concluded photographs that showed victim's hands and feet and victim's nude body from a distance were not gruesome).

State v. Hampton, 213 Ariz. 167, 140 P.3d 950, ¶¶ 3, 16–20 (2006) (defendant was upset at victim because victim had identified him to police; state's theory of case was defendant went to victim's room, turned up volume on CD player, then shot victim in forehead, killing him, then as defendant was about to leave house, he went back into bedroom where victim's girlfriend

was sleeping, and when she told him to get out, he shot her in head, killing her and her unborn child; defendant contended, because he did not deny that murder took place, only that he was not the killer, photographs of victims were not relevant; court stated photographs of adults showed placement of victim's injuries and thus were relevant to corroborate testimony of state's witnesses, and although photograph of fetus was unsettling, it was relevant to fetal manslaughter and multiple homicides aggravating circumstance; court again stated that "[t]here is nothing sanitary about murder, and there is nothing in Rule 403 that requires a trial judge to make it so"; court concluded trial court did not abuse discretion in admitting photographs).

State v. Anderson, 210 Ariz. 327, 111 P.3d 369, ¶ 40 (2005) ("There is nothing sanitary about murder, and there is nothing in Rule 403 that requires a trial judge to make it so.").

State v. Phillips, 202 Ariz. 427, 46 P.3d 1048, ¶¶ 29–31 (2002) (African-American man and white or Hispanic man with bandana on face robbed bar while armed with handgun and sawed-off rifle; trial court admitted photograph of defendant holding two handguns and wearing bandana; because one gun in photograph matched description of gun used in robbery, photograph was relevant; court noted defendant failed to explain how photograph's prejudicial effect outweighed its probative value).

State v. Cañez, 202 Ariz. 133, 42 P.3d 564, ¶¶ 67 (2002) (photograph (ex. 19) depicted what witness saw upon entering house; court found photographs were not gruesome or inflammatory, and stated photograph had little probative value and little prejudicial effect, so trial court did not abuse discretion in admitting photograph).

State v. Cañez, 202 Ariz. 133, 42 P.3d 564, ¶¶ 68 (2002) (photograph (ex. 75) depicted what officer saw upon entering house; court found photographs were not inflammatory or gruesome, and held that, to extent officer testified he did not remember body being in position depicted in photograph, that went to weight of photograph and not its admissibility).

State v. Cañez, 202 Ariz. 133, 42 P.3d 564, ¶¶ 69 (2002) (photographs (ex. 32–34) were of victim's head during autopsy; defendant conceded photographs were relevant, but claimed they were unduly inflammatory; court found photographs were not gruesome or inflammatory).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 21–25 (2001) (court stated photographs of victim's body were relevant, although noting that, when defendant does not contest certain issues, probative value may be minimal, but held trial court did not err in admitting Exhibits 42–45).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 25–27 (2001) (court noted prosecutor argued photographs were relevant because they showed angles and depths of penetrating wounds, but prosecutor never questioned any witness about angles and depths of wounds; court concluded that photographs met bare minimum standard of relevance, but that probative value was substantially outweighed by danger of unfair prejudice, thus trial court should have excluded Exhibits 46–47, but found any error to be harmless).

State v. Doerr, 193 Ariz. 56, 969 P.2d 1168, ¶¶ 29, 31–32 (1998) (court held that enlarged photograph of victim when alive was not relevant, and there was danger that such photograph would cause sympathy for victim, but concluded admission of photograph did not materially affect verdict in light of overwhelming physical evidence).

State v. Trostle, 191 Ariz. 4, 951 P.2d 869 (1997) (although photograph of victim was arguably gruesome because body had been in desert for several days, it showed neither face nor fatal head wound, and therefore was not unfairly prejudicial).

State v. Rienhardt, 190 Ariz. 579, 951 P.2d 454 (1997) (photographs of victim's injuries corroborated testimony of state's key witness; because they were fair representation of what happened, they were not unfairly prejudicial).

State v. Spreitz, 190 Ariz. 129, 945 P.2d 1260 (1997) (photographs of victim after decomposing in desert heat for 3 days and showing insect activity had little if any probative value, thus trial court erred in not finding probative value was substantially outweighed by prejudicial effect).

State v. Lee(II), 189 Ariz. 608, 944 P.2d 1222 (1997) (four autopsy photographs and three blood-spatter photographs were relevant to show location, size, and shape of wounds, and sequence of shots, and were not unfairly prejudicial).

State v. Hughes, 189 Ariz. 62, 938 P.2d 457 (1997) (photograph of victim in morgue showed her clothing and discoloration of her face; although it was gruesome, it was not unduly prejudicial).

State v. Thornton, 187 Ariz. 325, 929 P.2d 676 (1996) (trial court found autopsy photograph was not unduly gory, and did not abuse discretion in finding that probative value was not outweighed by danger of unfair prejudice; because videotape of walk-through of victim's house showed victim's body only twice and did not show blood oozing from head, it was not unduly prejudicial).

State v. Wagner, 194 Ariz. 1, 976 P.2d 250, ¶¶ 43–45 (Ct. App. 1998) (court agreed that photographs showing victim's (1) face with traces of blood and assorted injuries, (2) chest wound with gunpowder residue, and (3) shoulder and ear with powder burn marks were relevant because they corroborated witness's testimony that defendant struck victim before shooting her and helped explain medical examiner's testimony about powder burn marks; because these were only marginally inflammatory, trial court did not abuse discretion in admitting them), *vac'd in part & aff'd in part,* 194 Ariz. 310, 982 P.2d 270 (1999).

403.cr.115 If a photograph has little bearing on any expressly or impliedly contested issue, or if a photograph is merely duplicative to other photographs, its relevance may be limited, and thus if that photograph is prejudicial, its probative value may be substantially outweighed by the danger of unfair prejudice.

State v. Davolt, 207 Ariz. 191, 84 P.3d 456, ¶¶ 63–64 (2004) (defendant contended trial court abused discretion in admitting photographs and videotape of crime scene because he did not contest identity of victims and fact that murders had occurred; court held probative value was minimal and photographs and videotape were highly inflammatory, thus trial court abused discretion in admitting them, but any error was harmless in light of other evidence).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 21–25 (2001) (court stated photographs of victim's body were relevant, although noting that, when defendant does not contest certain issues, probative value may be minimal, but held trial court did not err in admitting Exhibits 42–45).

State v. Bocharski, 200 Ariz. 50, 22 P.3d 43, ¶¶ 25–27 (2001) (court noted prosecutor argued photographs were relevant because they showed angles and depths of penetrating wounds, but prosecutor never questioned any witness about angles and depths of wounds; court concluded that photographs met bare minimum standard of relevance, but that probative value was

substantially outweighed by danger of unfair prejudice, thus trial court should have excluded Exhibits 46–47, but found any error to be harmless).

State v. Anderson, 197 Ariz. 314, 4 P.3d 369, ¶ 30 (2000) (court concluded several photographs were cumulative to other less inflammatory photographs, and thus were arguably prejudicial in light of slight probative value).

403.cr.120 The trial court is not required *sua sponte* to weigh the danger of unfair prejudice against probative value unless the party against whom the evidence is offered objects on that basis.

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 55–58 (2003) (defendant contended on appeal that trial court abused discretion under Rule 403 in admitting photographs; state noted defendant only objected generally to admission of photographs; court held that, "Because the appellant's trial counsel did not object on 403 grounds, the argument has been waived.").

State v. Montaño, 204 Ariz. 413, 65 P.3d 61, ¶¶ 59–63 (2003) (when witness testified at trial about meaning of defendant's EME tattoo, defendant objected on basis of relevance and foundation; on appeal, defendant contended admission of this evidence violated Rule 403; court held defendant waived any Rule 403 objection).

State v. Miller, 215 Ariz. 40, 156 P.3d 1145, ¶ 9 (Ct. App. 2007) (defendant was charged with robbery at commercial store; after reviewing suspect descriptions and *modus operandi* of two other robberies at commercial stores, detective concluded that same person had committed those robberies; trial court permitted detective to testify that, after date that defendant was arrested, there had been no other similar robberies in the area; court held this evidence was relevant; court stated evidence may have been subject to exclusion under Rule 403, but would not address that issue because defendant did not make Rule 403 objection).

403.cr.140 When evidence has both probative value and prejudicial effect, the trial court need not require wholesale proscription; it should determine (1) whether probative value of the evidence is sufficient that it should be admitted in some form, (2) what restrictions should be placed by jury instructions on the use of the evidence, and (3) whether the evidence can be narrowed or limited to reduce its potential for unfair prejudice while preserving probative value.

State v. Martinez, 196 Ariz. 451, 999 P.2d 795, ¶¶ 29–33 (2000) (because ballistic evidence showed shell casing found at subsequent robbery was consistent with ammunition used in officer's gun, evidence that defendant committed subsequent robbery was relevant to determination of identity of defendant as person who killed officer; because trial court allowed admission only of evidence of robbery and use of weapon, and precluded evidence that defendant shot and killed store clerk during robbery, trial court adequately protected defendant against unfair prejudice).

State v. Hughes, 189 Ariz. 62, 938 P.2d 457 (1997) (evidence of defendant's drug involvement with victim was relevant to motive, but trial court erred in admitting cumulative evidence because it went far beyond that necessary to establish motive, thus trial court should have limited this evidence to its probative essence by excluding irrelevant or inflammatory detail).

State v. Coghill, 216 Ariz. 578, 169 P.3d 942, ¶¶ 12–22 (Ct. App. 2007) (defendant was charged with sexual exploitation of minor based on having child pornography on his computer; defendant contended trial court abused discretion in admitting evidence that he had downloaded adult pornography on his computer; court held that evidence showing defendant's ability,

willingness, and superior opportunity to download and copy other material from Internet was both relevant and admissible, but nature and content of other downloaded material was either not relevant, or else its probative value was substantially outweighed by danger of unfair prejudice; court stated witnesses could have referred to other material in general terms without disclosing its pornographic nature).

State v. Connor, 215 Ariz. 553, 161 P.3d 596, ¶¶ 29–34 (Ct. App. 2007) (defendant was charged with first-degree murder; evidence that victim's apartment had been burglarized and that family and friends had told victim they believed defendant had done the burglary and victim should stay away from defendant admissible to rebut defendant's testimony that he was friends with victim and was welcome in his apartment; to avoid prejudice to defendant, trial court instructed jurors there was no evidence defendant had in fact burglarized apartment).

State v. Baldenegro, 188 Ariz. 10, 932 P.2d 275 (Ct. App. 1996) (in charge of assisting and participating in criminal syndicate for benefit of street gang, state had to prove "Carson 13" was criminal street gang, thus evidence of criminal activity by members of "Carson 13" was relevant and had substantial probative value; trial court limited prejudicial effect by excluding specific names and instances of criminal conduct by "Carson 13" members; trial court therefore did not abuse discretion by admitting this evidence).

403.cr.180 The appellate court must look at the evidence in a light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect.

State v. Harrison, 195 Ariz. 28, 985 P.2d 513, ¶¶ 20–21 (Ct. App. 1998) (in charge of aggravated assault against police officers, because defendant claimed he acted in self-defense, his statement while being transported to police station that, if he had possessed a gun, both he and officer would have been shot, was admissible to show desire to harm officer and to refute claim that he acted in self-defense, thus evidence had probative value; because numerous witnesses testified about defendant's aggressive, assaultive behavior, this evidence added little to prejudice already presented), *aff'd,* 195 Ariz. 1, 985 P.2d 486 (1999).

403.cr.190 Because the trial court is best situated to conduct a Rule 403 balancing, an appellate court will reverse a trial court's ruling only for an abuse of discretion.

State v. Cañez, 202 Ariz. 133, 42 P.3d 564, ¶¶ 60–61 (2002) (court rejected defendant's claim that, even though defendant's statement was admissible, playing audiotape to jurors was prejudicial because of defendant's thick accent, poor grammar, limited education, and cocky, nonchalant attitude).